

WORKSHEET NOTES, THOUGHTS AND COMMENTS OF MIKE MCKEE – PURPOSE IS TO ASSIST IN COMPILING FINAL DISPOSITION (EITHER YEA IF IN MAJORITY OR DISSENT IF IN MINORITY)

BARRY ALLEN BEACH AO21520

FOURTH APPLICATION FOR EXECUTIVE CLEMENCY; PARDON OR COMMUTATION OF SENTENCE – APPLICATION DATED SEPTEMBER 12, 2013 – APPLICATION RECEIVED BY MONTANA BOARD OF PARDONS AND PAROLE SEPTEMBER 13, 2013 (INCOMPLETE) – APPLICATION DEEMED COMPLETE SEPTEMBER 30, 2013.

PREFACE

This application is a confusing, difficult application to review. It is lengthy and contains a variety of information, some of it pertinent, some not. Some portions of the application indicate that inmate Beach is not requesting a pardon for the crime for which he was convicted, yet many references and much information contained in the application relates to his claim of innocence. There are several additional responses and letters of “clarification” provided by inmate Beach's attorneys relating to the scope of the application, but in this writer's opinion, only served to add more confusion to the review. In order to give inmate Beach every benefit of consideration however, I will attempt to address each item presented in the application, whether or not it directly relates to the stated purpose of the clemency request.

PURPOSE OF APPLICATION - *To mediate Mr. Beach's 100-year, no parole sentence by making Mr. Beach immediately eligible for parole.* Mr. Beach acknowledges that this Board has previously stated that:

“Unless the board otherwise orders or there has been a substantial change in circumstances, as determined by the board, an offender whose application for Executive Clemency has been denied, may not reapply for Executive Clemency”.

SUBSTANTIAL CHANGE IN CIRCUMSTANCES PER APPLICATION:

(1) CHANGE IN THE LAW RELATING TO SENTENCES OF JUVENILES TO LIFE WITHOUT PAROLE (*MILLER VS ALABAMA*) – THE APPLICATION STATES THAT MR. BEACH'S SENTENCE IS, FOR ALL PRACTICAL PURPOSES, A SENTENCE OF LIFE WITHOUT PAROLE.

(2) MR. BEACH HAS NOW SERVED OVER 30 YEARS IN PRISON

(3) MR. BEACH DEMONSTRATED THAT HE IS REHABILITATED BY HAVING LIVED AN EXEMPLARY LIFE DURING THE YEAR AND A HALF HE SPENT LIVING AND WORKING IN BILLINGS UNTIL MAY, 2013.

(4) THERE IS NEW EVIDENCE ABOUT THE CRIME THAT WAS NOT AVAILABLE TO THIS BOARD IN 2007. THIS NEW EVIDENCE CASTS EVEN MORE DOUBT ON THE CONVICTION.

Each of these propositions have been examined in great detail as described below, and in the context of “substantial change in circumstances” as noted above.

APPLICATION - (1) CHANGE IN THE LAW (Miller vs. Alabama)

Per Ben Reed, staff attorney for the Montana Department of Corrections:

“Mike McKee asked me to look at the impact that Miller v. Alabama might have on the Beach sentencing, and to send you this e-mail. In a nutshell, Miller held that The Eighth Amendment forbade a sentencing scheme that mandated life in prison without possibility of parole (LWOP) for juvenile offenders. Mike was interested in finding out whether Beach’s sentence – and, specifically, the parole limitation – was mandatory or discretionary. It was, in fact discretionary.

In 1979, the crime of Deliberate Homicide was punishable by up to death or life in prison, if the death penalty was sought, or by 10 to 100 years. Then, as now, if the defendant were a minor, the court had the option of ignoring the 10-year minimum and giving the defendant less time. However, there was no mandatory LWOP. This decision was made at the judge’s discretion, and is therefore not compromised by Miller.”

The State's Response in Opposition to Barry Allen Beach's Fourth Application for Executive Clemency dated January 24, 2014 notes that ...*“it is merely speculation to presume that if Beach came before an unbiased court today for sentencing on the same crime, that he would not receive a 100-year sentence without the possibility of parole. Finally, even though Beach cannot benefit from the correctly-stated holding in Miller, assuming the holding was favorable to him, it would not retroactively apply to his case.”*

Another attorney licensed to practice in the State of Montana has provided a written opinion on this matter:

“The question for the BOPP then becomes “should (as argued by Beach's attorney) the Board Consider Miller v. Alabama to Beach's Clemency petition”?

Montana did not have a mandatory sentencing scheme like Alabama when Beach was sentenced. Therefore the Miller holding does not directly apply the Beach case.

Even if Miller did apply to Beach the Court would have to apply it retroactively to the Beach case and there is nothing that requires the Court to do so.

Even if Miller did apply to Beach, Miller did not preclude giving a minor life without parole. Miller requires the sentencing Court to consider both the offender, i.e., age, background etc. As well as the nature of the offense, i.e., the violence involved, what defendant did etc. Here, Beach was nearly 18 yrs old and the crime was very violent. Another sentencing Court could very well impose the same sentence Judge Sortie imposed.

Beach argues that the Court in Miller suggests that it may apply its ruling to other states that do not having mandatory sentencing guidelines. That may be so-but it is not up to BOPP to do so.

Beach does have another remedy whereby he could present all of these arguments directly to the Mt S Court-a Writ of Habeas Corpus.

CONCLUSION - THIS CASE DOES NOT APPLY DIRECTLY TO MR. BEACH AND IS

THEREFORE DETERMINED NOT TO BE A SIGNIFICANT CHANGE SINCE HIS LAST APPLICATION.

Further, with respect to Mr. Beach's claim *that his sentence is, for all practical purposes, a sentence of life without parole, the facts are otherwise.* Mr. Beach, due to the law in effect at the time of the crime for which he has been convicted, is receiving "good time". Good time, in essence, is a day-for-day reduction in his sentence. For every day served, Mr. Beach receives an additional day of "good time". As a practical matter, Mr. Beach's 100 year sentence is, and has been, a 50 year sentence.

According to the records department at the Montana State Prison, Mr. Beach will fully discharge his sentence on October 15, 2036 and will be a free man. It is noted that Mr. Beach's attorneys continue to misrepresent his sentence as being akin to a life sentence, the most recent example by Mr. Peter Camiel during the public comment period relating to the application review process on April 29, 2014. **This is simply not so.**

APPLICATION - (2) MR. BEACH HAS NOW SERVED OVER 30 YEARS IN PRISON.

On it's face, this board member concurs with this statement on the application. Mr. Beach was continuously incarcerated until temporarily released by District Court Judge Phillips pending a new trial that the judge ordered following a hearing on August 1-3, 2011. Mr. Beach was released into the community without supervision until the Montana Supreme Court reversed Judge Phillips' decision on May 14, 2013 and ordered him returned to prison.

However, this board member interprets the purpose of Mr. Beach's application in this regard is to somehow convey the impression that 30 years is an extraordinary amount of time in Montana to serve for the commission of a brutal murder of a teen age girl, given that Mr. Beach was sentenced to 100 years. Mr. Beach submits a statistical report of sentences for heinous crimes handed down by Montana judges. A similar report was submitted to the Board in 2007 and was deemed not to be compelling with respect to Mr. Beach's application for pardon and/or recommendation for removal of his no-parole restriction at that time.

CONCLUSION - THERE HAS NOT BEEN A SUBSTANTIAL CHANGE WITH RESPECT TO THIS ISSUE SINCE MR. BEACH'S LAST CLEMENCY APPLICATION AND DECISION.

APPLICATION - (3) (A) MR. BEACH DEMONSTRATED THAT HE IS REHABILITATED BY HAVING LIVED AN EXEMPLARY LIFE DURING THE YEAR AND A HALF HE SPENT LIVING AND WORKING IN BILLINGS UNTIL MAY, 2013.

As noted above, Mr. Beach was released into the community for a period of time, pending what he thought at the time was a new trial on his claim of innocence. There has been no information disclosed that Mr. Beach violated any laws or did not behave as a good citizen during that time. However, Mr. Beach was not supervised by any Department of Corrections officers, nor was he subjected to the random breath and body fluid testing required of other felons under supervision. Further, there were no random checks of his residence for any contraband or illegal substances, or to check his whereabouts on a 24 hour basis. Since Mr. Beach was released pending another trial, he surely would have known that any misconduct would not serve his best interests upon his next court appearance.

However, the idea that an inmate is considered rehabilitated based solely on clear conduct or lack of

contact with the police or criminal justice authorities is not sufficient. Nor is true rehabilitation only evidenced by an individual making friends, getting a job or otherwise participating in community activities. In this writer's opinion, in order for a convicted felon to be truly rehabilitated, the first thing that must occur is accepting responsibility for his actions and being accountable for the crime committed. Only after the most basic step of accepting responsibility has occurred, can the process of true rehabilitation begin.

From his trial through all the many unsuccessful legal appeals, the extraordinary clemency hearing granted by the Board in 2007 and through his evidentiary hearing in Judge Phillips court, Mr. Beach has professed his innocence and has attempted to place the blame for the murder of Kim Nees on others. Only now, upon submission of his fourth application for executive clemency has Mr. Beach seemingly abandoned his quest for a reversal of his conviction and is instead now only asking for commutation of his sentence. Mr. Beach's application contains several references to his claim that he is now rehabilitated, an interesting position to take considering that he has never accepted responsibility for the crime of which he was convicted.

This very issue was addressed during Mr. Beach's 2007 clemency hearing, and rejected by the Board.

The 2007 Board noted in its decision *"...In order to remove the no parole requirement, more must be done than a simple re-thinking, a request for an approach from a different perspective, a statistical demonstration or calling upon a litany of people who have always been or have grown fond of the inmate in question or have come to believe he was wrongly convicted because of the rumors they have heard perhaps for decades, but which may have risen to fever pitch because of the "investigation" of Centurion Ministries. Certainly, more must be required than a showing of good or even exemplary behavior within the prison walls...."*

Mr. Beach had attained several years of clear conduct in the prison prior to the 2007 hearing, but following that hearing received a disciplinary write up on April 30, 2008 for fighting. Since that date Beach has apparently maintained clear conduct both within the prison and during his temporary release by Judge Phillips. Maintaining a period of clear conduct prior to the 2007 hearing and maintaining clear conduct from April, 2008 until now does not support a substantial change of circumstance.

Conduct within the law and the norm of society is expected behavior by all citizens and is achieved by the greater portion of society whose members are not incarcerated, yet it is somehow construed as being an extraordinary accomplishment by Mr. Beach. A number of people during the public comment period of his application review provided testimony relating to Mr. Beach's ability to relate positively to people on a personal basis both while in prison as well as in the community. But Mr. Beach's failure to achieve the most basic step of accepting responsibility and accountability continues to trump the other positive steps that he may have made.

(B) CONSIDERATION OF WHETHER RELEASE WOULD POSE A THREAT TO PUBLIC SAFETY

Mr. Beach's claim that his *prison record of three decades is extraordinarily positive*, is simply not true. While Mr. Beach has remained write up free since 2008, he has a history of numerous disciplinary infractions over a fifteen year time span from the time of his incarceration, including numerous incidents of fighting, conduct which disrupts, disobeying direct orders, etc. In addition, written documentation exists relating to incidents resulting in female employees being terminated from employment at the prison as a result of manipulation by Mr. Beach.

Individuals who commit so-called "white collar crime" are often skilled manipulators, who gain the

confidence and trust of their victims in order to perpetrate their schemes. Embezzlers are examples of these type individuals, as are unscrupulous but licensed investment advisers and insurance producers who con their victims out of large sums of money, sometimes the victims entire life savings. While these type criminals may not have committed brutal murders, the damage they cause their victims can be nearly as devastating. Placing a highly skilled, manipulative individual who has been convicted of a heinous crime into the community prior to the discharge of his sentence is an extremely risky endeavor for the protection of society. In my opinion, the release of Mr. Beach without demonstrating that he is truly rehabilitated requires the utmost caution.

The 2007 Board also noted in its decision “...Furthermore, we do note the augmented danger posed by a man, despite his generally acceptable and in some ways commendable deportment with the prison walls, who continues to make conflicting protestations of his own innocence despite all evidence to the contrary and has resisted taking responsibility and coming to grips with his wrongdoing despite the fact that proof of it beyond a reasonable doubt has been reviewed and found compelling by a nearly impossibly long list of well-qualified and conscientious public servants through the state and federal judicial systems...”

Mr. Beach has attempted to blame a variety of others for the crime for which he was convicted, and has no hesitation at lodging baseless accusations of murder towards presumptively innocent people. This type of behavior does not support Mr. Beach's contention that society will not be endangered should he be released.

Following the recantation of his incriminating confession to the brutal murder of Kim Nees, Mr. Beach has maintained his innocence for a crime for which he was convicted by a jury and sentenced to 100 years in prison without the possibility of parole. At the 2007 clemency hearing, Mr. Beach himself agreed that the sentence he received was a fair sentence for the person who did murder Kim Nees.

Taken as a whole, Mr. Beach's claim of an **extraordinarily positive** prison record is not supported by the evidence of his record.

CONCLUSION - THIS BOARD MEMBER DOES NOT FIND THAT THERE IS SUFFICIENT EVIDENCE OF TRUE REHABILITATION SINCE THE LAST CLEMENCY APPLICATION TO SUPPORT HIS CLAIM OF SUBSTANTIAL CHANGE OF CIRCUMSTANCE WHICH WOULD WARRANT COMMUTATION OF HIS SENTENCE.

(4) APPLICATION - THERE IS NEW EVIDENCE ABOUT THE CRIME THAT WAS NOT AVAILABLE TO THIS BOARD IN 2007. THIS NEW EVIDENCE CASTS EVEN MORE DOUBT ON THE CONVICTION.

As referenced above, in his letter dated December 3, 2013 Mr. Beach's attorney stated: *...“As we noted, Mr. Beach is not seeking a pardon or any finding by this board on the issue of his guilt or innocence. He is not requesting an evidentiary hearing before the board on the issue of guilt...”*. Yet, a substantial portion of Mr. Beach's application relates to the hearing in Judge Phillips court and testimony provided by witnesses in that proceeding. Much is made of the findings of Judge Phillips and his decision.

The fact remains, Judge Phillips' decision was overturned by the Montana Supreme Court, and Mr. Beach was ordered returned to prison. Many of the same witnesses testified under oath at the 2007 clemency hearing and much of the “new” evidence presented to Judge Phillips had already been

heard by the board and found not to be credible. Likewise, the Montana Supreme Court found that Beach's new evidence was not reliable. In its lengthy opinion, the Supreme Court found that much of the new testimony was unreliable because the witnesses' stories had changed over time. Further, (at paragraph 70, page 47 of its decision) the Montana Supreme Court found that *"...Unlike memories that normally fade over time, the memories of Beach's new witnesses have miraculously sharpened in detail over the years..."* And finally, the Supreme Court found that *"....after reviewing the entirety of the combined, hybrid evidentiary records of the case, we conclude a jury would still be likely to convict Beach of the crime...."*

CONCLUSION - THERE HAS NOT BEEN A SUBSTANTIAL CHANGE WITH RESPECT TO THIS ISSUE SINCE MR. BEACH'S LAST CLEMENCY APPLICATION AND DECISION.

The following are noted in Mr. Beach's application but not addressed individually as they were previously considered by the Board of Pardons and Parole's Clemency Hearing panel in 2007, and/or within the court proceedings of District Court Judge Phillips and the Montana Supreme Court's reversal of Judge Phillips decision.

DNA Evidence Is Not Available To Support Mr. Beach's Claim of Innocence

Significant Facts about the Questionable Evidence against Mr. Beach

The Phenomenon of False Confessions was Not Understood in 1984

New Evidence Not Previously Heard by the Board -

OTHER ISSUES – Mr. Beach raised additional issues in his application that have been considered by this board member:

The Evidence at Trial – Mr. Beach's attorneys claim that “newly disclosed” evidence calls into question the veracity of the Louisiana detectives who interrogated Mr. Beach. They claim that relevant information from the personnel file of Detective Via had not been disclosed at the time of the 2007 hearing, indicating that Detective Via was not the person he presented himself to be. Mr. Beach's application lists seven allegations of misconduct by Detective Via, all except one occurring after the date of Barry Beach's confession, and prior to the 2007 board hearing.

Mr. Beach's attorneys had the opportunity to cross-examine Detective Via during the 2007 hearing, and none of their current allegations were raised at that time. Further, Mr. Beach's attorneys present their claims in the absence of any further detail with respect to the alleged violations, and in the absence of any opportunity for Detective Via to respond. Further, there is nothing in the record, including the direct testimony of Detective Via and Officer Calhoun in 2007 to indicate that there was any evidence of the type of misconduct alleged against Detective Via which would have compromised the interrogation and confession of Barry Beach. These claims are nothing more than a “red herring” and are discounted in their entirety.

The Attitude of the Community Toward Barry Beach – Mr. Beach's application states *"...There is exceedingly strong support among the public, throughout Montana and elsewhere for the parole of Barry Beach..."*

All letters received in connection with Mr. Beach's application have been carefully read and placed into various categories by this writer. Interestingly, the number of letters received parallels each

presentation of NBC's Dateline television production, and editorials or letters to the editor in Montana newspapers, most notably the Great Falls Tribune.

Of letters written by people with Montana addresses, a majority are from the Billings and Great Falls areas. There are also several letters from either current or former political figures with high name recognition, and a number from former attorneys and their family members who have unsuccessfully defended Mr. Beach in his various court proceedings. Of the political figures who have written, only one has been identified by this writer to have intimate knowledge of the Beach case, and that individual acknowledged that he “*...respects your responsibility to exercise your individual judgment...*” when considering the Beach clemency application.

Of further interest, a significant number of letters from the political figures and former defense attorneys supporting his application were received in August and September 2013, **before** Mr. Beach's current application for clemency had been submitted to the board.

Many of the letters were received from long-time supporters of Mr. Beach and a number of individuals have written multiple letters, included in the totals. Most of the letters from people who actually know Mr. Beach or have intimate knowledge of his case are from people who came to know him through prison ministries or during the time he was temporarily released into the Billings community by Judge Phillips.

Of the more than 450 letters of support for Beach received, approximately ten percent fall into the category of people who have actually met him or have substantial knowledge of his case. Of the total letters received, approximately thirty percent were from out of state and approximately forty percent of those were form letters, primarily from Texas.

Approximately ninety percent (90%) of all the letters written (excluding the online petition signatures) only know of the Beach case by having watched the Dateline television production or through editorials, news articles and letters to the editor in the media.

In addition to the actual written letters received, the board has received signatures in the form of on-line petitions from websites such as “Change.org”, in which anyone can start a “cause” for free and almost immediately generate support from across the country and around the world. Support for other convicted inmates in the Montana prison system have also been included in such online petitions for Mr. Beach.

Many of the letters from people who know Mr. Beach or are intimately acquainted with his case were also received prior to and following, Mr. Beach's 2007 clemency hearing. Most of the people who spoke in favor of Mr. Beach at the board's April 29, 2014 application review have also submitted letters. In consideration of this exact issue, the 2007 board stated “*...The witnesses heard at the hearing on the matter of commutation each spoke either of how they had believed Mr. Beach innocent from the start or to the fact that they had met him in prison and found him to be a capital fellow. Many said that they had read the file compiled by Centurion Ministries and that they therefore had judged Mr. Beach innocent of the crime. We have great sympathy for that position...*”

After reading all the correspondence received in this case, the only change from the last clemency hearing is the amount of publicity that has continued to be generated on behalf of Mr. Beach by his supporters, the highly publicized hearing in Judge Phillips court, and the repeated airing of NBC's Dateline television shows. Each of these media events in turn create more publicity, and more letters which thereby increases the perception of increased support from the public, however does not increase the public's awareness of the true facts of the case.

Interestingly, little publicity relating to the reasons for the Montana Supreme Court reversal of Judge Phillips decision has resulted, only the decision to return Beach to prison, characterized by the media as a “miscarriage of justice”. But the facts of the case and the “public perception” remain unchanged from 2007. People who supported Mr. Beach then continue to support him now.

CONCLUSION- THERE *HAS NOT* BEEN A SUBSTANTIAL CHANGE WITH RESPECT TO THIS ISSUE SINCE MR. BEACH'S LAST CLEMENCY APPLICATION AND DECISION.

Further Incarceration Would Be Grossly Unfair – Mr. Beach's petition claims that only one other inmate who committed a homicide while under the age of 18 has been sentenced to life without parole, and that individual murdered three victims, while Barry Beach has only been convicted of murdering one. The argument that the length of sentence should be increased (or decreased) according the number of victims is unpersuasive.

As a matter of public policy, the Legislature has determined the sentencing guidelines to be followed in Montana with emphasis on judges' discretion. Mr. Beach's sentence has been vetted by the Sentence Review Board, multiple courts of appeal and the Montana Supreme Court. At his trial, Mr. Beach was represented by one of the most high profile criminal defense attorneys in the Northwest, if not the nation. At every stage of his multiple appeals Mr. Beach has been afforded the finest legal representation available, yet he and his lawyers have not prevailed. The issues of Mr. Beach's sentence have been fully examined and little substance reflecting significant change has been presented in his application.

There is, however, another aspect to be considered in this case, and that is that of the family of Kim Nees, the victim.

The Board of Pardons and Parole Administrative Rule 20.25.901A(4) provides: “...**When considering an application for executive clemency the hearing panel shall (emphasis provided) consider the nature of the crime, the comments of the sentencing judge, the prosecuting attorney, (emphasis provided) the community, and the victims and victims' family (emphasis provided) regarding clemency for the applicant, and whether release would pose a threat to the public safety...**”

Following Mr. Beach's trial and prior to sentencing, there was strong support from the family of Kim Nees for the 100 year no parole sentence handed down by Judge Sorte, in lieu of Mr. Beach potentially receiving a sentence of death. Strong opposition for any commutation of Mr. Beach's sentence continues today. The letters and comments of supporters of Mr. Beach outnumber those who oppose his application, but they do not outweigh the continued opposition of the people who have suffered through the past 30 years of watching Mr. Beach file unsuccessful appeal after unsuccessful appeal in every venue legally possible.

While Mr. Beach's status as a celebrity has grown with the assistance of the media and television sensationalism, the very real loss and void in their lives resulting from Kim Nees' death continues for her family and friends. Each and every time Mr. Beach and his attorneys attempt a new, headline grabbing ploy, the real victims in this case are forced to agonize through it wondering if “this time” he will prevail.

The original prosecuting attorney in this case has once again voluntarily come forward to oppose consideration of Mr. Beach's latest attempt at clemency. Interestingly, the exercise of his right to present his written opinion, **and as required by the Board as noted above to consider**, has resulted in him being castigated in the media from a number of Mr. Beach's most ardent supporters.

There is something very wrong with this picture.

CONCLUSION – Parole board members are citizens who volunteer their service to a time consuming, labor intensive, mostly thankless job for little pay. Board members must possess certain education and/or experience as provided by statute. Board members are appointed by the Governor, ratified by the Montana Senate and serve staggered four year terms.

The Board of Pardons and Parole is detail oriented.

Each case file contains literally hundreds of pages of life and criminal history, reports on the inmate from a wide variety of sources, including medical and psychological diagnosis and evaluations, treatment programs completed, etc. The files are often several inches thick depending on the length of time the inmate has been in the system, and frequently an inmate may have more than one file. Decisions by parole board panels have wide ranging ramifications on public safety, the lives of inmates and their families, the lives of victims and their families and the communities in which all reside.

Parole board members do not make their decisions in a vacuum, there are many reports and recommendations from a wide variety of sources having contact with an inmate, including recommendations of the professional parole board staff. Input is received from an inmate's family as well as victims and their families, members of the community and criminal justice authorities and the public at large prior to making decisions. Multiple members comprise each hearing panel so there are always at least two board members concurring on a decision. Parole board decisions are often difficult as there are many factors in each case competing for priority and significance in the minds of each member.

But one factor is constant. Decisions are made on hard facts and evidence, not on emotion and sentiment or hollow arguments. Parole board decisions are not made on the "everybody knows" or "I've just got a feeling" theories.

In cases such as Mr. Beach, it is difficult to minimize the concerns of prominent citizens who have strong opinions, but are short on the facts. "Public opinion" is an amorphous term that is difficult to define. Cramming 50 angry people into a small hearing room may seem imposing, but scattering those same 50 people throughout a large auditorium reduces the negative impact of their presence. But what is popular might not be right, and the parole board is sometimes criticized for not making the popular decision.

The case of Barry Allen Beach is extraordinary in one sense, it contains the most voluminous amount of material for any single inmate I have dealt with in my ten years on the parole board. As noted above, Mr. Beach has had the benefit of highly skilled, competent legal counsel throughout his 30 some year saga of appeals, which has contributed greatly to his file and this is totally understood.

However, in the final analysis, the questions addressed above must be answered. In this case, the questions presented by Mr. Beach's application have been analyzed and my answer follows:

THIS BOARD MEMBER CANNOT IDENTIFY SUFFICIENT COMPELLING REASONS OF EQUITY AND JUSTICE THAT WARRANT THE SUBSTITUTION OF A LESSER PENALTY OTHER THAN THAT AUTHORIZED BY THE LEGISLATURE AND IMPOSED BY THE SENTENCING COURT. ACCORDINGLY, I WILL NOT VOTE TO AUTHORIZE A FURTHER INVESTIGATION OR SCHEDULE A PUBLIC HEARING ON THE FOURTH

CLEMENCY APPLICATION OF BARRY ALLEN BEACH.


MIKE MCKEE

CHAIRMAN

DATE 5-28-2014